

REMARKS

Careful consideration has been given by the applicants to the Examiner's comments and rejection of various of the claims, as set forth in the outstanding Office Action, and favorable reconsideration and allowance of the application, as amended, is earnestly solicited.

Applicants have carefully noted the Examiner's rejection of various of the claims under 35 U.S.C. §112, second paragraph, as being indefinite, and appropriate amendatory action has been taken in order to correct the terminology in the claims. In essence, this should clearly render the formal grounds of rejection of the claims moot, inasmuch as the terminology is now deemed to be clear, while concurrently distinguishing over the art of record.

Applications further gratefully note the Examiner's indication that at least Claims 9-14 are considered to be directed to allowable subject matter and would be allowed if either rewritten in independent form or made dependent from an allowable claim.

Concerning the rejection of the claims, applicants note that Claims 1-5, 7, 8 and 15-18, as being anticipated by either Moya or Göllner; and the rejection of Claims 1, 3-8 and 15-19 under 35 U.S.C. §102(b), as being anticipated by Wiggermann, as detailed in the Office Action.

However, upon careful consideration of the art, applicants respectfully submit that the claims, as amended and presented herein, clearly and patentably distinguish thereover.

In essence, in order to clarify independent Claims 1 and 15, in addition to the formal amendments, as required, applicants indicate that only a single positioning element 19b is arranged on the cam disc, contrary to the prior art wherein this particular structural and functional limitation is not at all ascertainable.

Concerning the foregoing, a Supplemental Information Disclosure Statement is being filed concurrently herewith, and a copy of applicants earlier German patent, German Publication DE 101 19 236 C1, which represents the state of the technology. However, applicants note that the claims, as pending and amended herein, also clearly and patentably distinguish thereover.

Reverting, in particular to Claim 1, applicants note that this essentially, in the inventive portions of the structure, as claimed therein, comprises three separate elements a), b) and c). In particular, applicants note that element a defines that the positioning element 19b is arranged on the cam disc 18 and is offset transversely to the guide center access 22 in the oblique axis plane E. Secondly, in element b), the cam disc 18 is adapted to be installed in a further position upon being rotated through approximately 180° about the guide center axis 22. Thirdly, in element c), the positioning elements which are provided for, i.e., 9a and 19b, cooperate in the functioning of the axial piston machine.

With regard to the foregoing, the particular features, as described hereinabove, cannot in any manner be ascertained from the prior art.

Thus, reverting to the art cited by the Examiner, particularly with regard to the prior art represented by Moya or Göllner, these references do not in any manner have anything in common, nor do they suggest the subject matter of Claim 1, inasmuch as neither of these publications disclose the above-mentioned features a) through c). This

structure and function in the present claims was clearly considered to be patentable during the prosecution of the PCT application on which this application is based, wherein applicants submitted the International Search Report of January 2004 to the U.S. Patent and Trademark Office.

Neither of the foregoing U.S. publications to Moya or Göllner provide any suggestion that through a lateral or traverse displacement or offset, by means of the cam disc there can be achieved a different volumetric setting, and namely, by a transverse offset or displacement of a positioning element, which is arranged on the cam disc. This particular unique structural and functional aspect clearly provides patentable distinctions over the art and is set forth in present independent Claims 1 and 15, wherein that particular feature has now been defined in clear terms.

With regard to Wiggemann, this publication discloses an axial piston machine including a gear rack drive for the pivoting of a unit, the latter of which consists of a cylinder block 12 and a cam disc 18, whereby on the side of the cam disc 18 facing away from the cylinder block 12 there are provided load-relieving grooves 41 for the gear rack drive. This has nothing in common with the present invention, as set forth in the pending claims.

Inasmuch as Claims 1 and 15 have been clearly defined that only a single positioning element 19b is arranged on the cam disc 18, there is not only provided a configuration which distinguishes relative to the state of the technology, as set forth in Wiggemann, U.S. Patent No. 2,968,286, but it is also obvious that neither of features b and c, as described hereinabove, can be ascertained from the state of the art, as

represented by Moya, Göllner, Wiggemann, or applicants' earlier German Patent Document DE 101 19 236 C1.

Concerning Claim 15, the concept of the cam disc 18 and the therewith cooperating elements on the axial piston machine are so configured that by means of a rotation of the cam disc 18 about 180° there is obtained a transversely offset position and thereby resultingly a different throughput volume, predicated on an inventive consideration and concept, as derived by the present inventors.

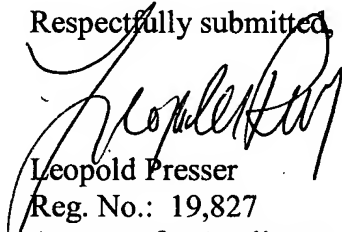
With regard to the state of the prior art, especially as represented by Wiggemann, there cannot be ascertained any disclosure or suggestion which would lead to the present invention. In Wiggemann, the cam disc 18 provides a plurality of load-relieving grooves 41 which, although they to some extent serve as positioning elements, as utilized in that publication, however, there is no indication that these positioning elements can be employed for a transverse displacement on the cam disc 18.

Accordingly, in the event that in the state of technology, there could possibly be achievable a transverse displacement on a cam disc 18, in that a gear rack engagement is offset by a groove 41, this means that the cam disc 18 is displaced sideways or transversely without being able to be rotated through an angle of 180°, and thereby cannot provide the volumetric variations, as in the present invention. As a result, the state of the technology leads away from the present invention, rather than providing suggestions as to the aspects thereof. The rotation of the cam disc 18 about 180° and the thereby obtained coincidence with the cooperative positioning component, cannot be ascertained from the state of the art, and is also not in any manner rendered obvious to one of skill in this particular technology.

In view of the foregoing comments and amendments, which are deemed to clearly define patentable distinctions of all of the claims, as currently on file and as amended, over the art, in addition to the already allowable Claims 9-14, the early and favorable reconsideration and allowance of the application by the Examiner is earnestly solicited.

However, in the event that the Examiner has any queries concerning the instantly submitted Amendment, applicants' attorney respectfully requests that he be accorded the courtesy of possibly a telephone conference or personal interview to discuss any matters in need of attention in order to place the application into order for allowance.

Respectfully submitted,



Leopold Presser
Reg. No.: 19,827
Attorney for Applicants

Scully, Scott, Murphy & Presser, P.C.
400 Garden City Plaza - Suite 300
Garden City, New York 11530-3319
(516) 742-4343

LP:jy